CF0000060191

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR M.P.

criminal Appeal No. 1406 of 1998.

Appellant. (In Jail) ::: Tuntun, @ Shanker,
son of Kandaru Uraon, aged 35 years
Occupation- Agriculture,
R/o Village-Dakai,
P.S. Dhorpur, Distt: Sarguja M.P.

Versus.

Respondent. ::: State of M.P.
Through P.S. Dhorpur,
Distt: Sarguja M.P.

9632

Filed on 27-6-98

by Shri Y.K. Ramaey

..... Advocate

APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE 1973.

(19)

HIGH COURT OF CHHATTISGARH AT BILASPUR

CORAM : HON'BLE SHRI DHIRENDRA MISHRA AND HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, JJ.

CRIMINAL APPEAL NO.1406 OF 1998

Appellant (In Jail) : Tuntun @ Shanker

versus

Respondent : State of M.P.

Present : Mr. Parag Kotecha, counsel for the appellant.
Mr. M.P.S.Bhatia, Panel Lawyer for the respondent/State.

J U D G M E N T
(Delivered on 5th of July, 2006)

As Per Dhirendra Mishra, J. :

The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure as he has been convicted and sentenced to undergo imprisonment for life under Section 302 of the Indian Penal Code and further sentenced to undergo rigorous imprisonment for 7 years under Section 201 of the Indian Penal Code for causing homicidal death of Loma vide judgment dated 27-5-1998 passed in Sessions Trial No.123/88 by learned Ist Additional Sessions Judge, Ambikapur.

2. Case of the prosecution in brief is that on 29-11-1987, when the deceased Loma was in his house, Tuntun alias Shanker and Khokha reached his house and assaulted him by a club. Subsequently, Bhola and Kandaru also

arrived there and all of them hanged Loma with the help of a rope through the ceiling, as a result of which, Loma died. It is the case of the prosecution that there was land related dispute between the father of Khokha, Kandaru and Loma. A report was lodged on 30-11-1987 vide Ex.P-19 by P.W.-2, Deelu, the son of the deceased and on the basis of the above report, offence under Sections 302, 201 of the Indian Penal Code read with Section 34 of the Indian Penal Code was registered. After investigation, earlier charge-sheet was filed against Khokha, Bhola and Kandaru, showing the present appellant as absconding. The earlier Sessions Trial No.123/88 was disposed of vide judgment dated 24-11-1997 and during the trial, both Kandaru and Khokha died and as such trial abated against them, however, learned trial Judge acquitted the accused Bhola of all charges. After disposal of the above sessions trial, the present appellant was arrested by the Police in compliance of the warrant of arrest issued against him in the adjudicated Sessions Trial No.123/88 and thereafter he was put to trial. Charges under Section 302 read with Section 34 of the Indian Penal Code and under Section 201 read with Section 34 of the Indian Penal Code were framed against the appellant. The appellant abjured the guilt.

3. The prosecution in order to establish the charges against the appellant examined 12 witnesses. Thereafter, statement of the accused was recorded under Section 313 of the Code of Criminal Procedure. The appellant denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. However, learned trial Judge, after hearing the arguments of Public Prosecutor and counsel for the appellant, convicted and sentenced the appellant as mentioned above.

4. Homicidal death of the deceased Loma is not in dispute. Even otherwise, from perusal of the statement of Dr. P.K.Shrivastava, P.W.-9 and his

post mortem report, in which he has found injuries over the person of the deceased described below and opined the cause of death as asphyxia due to hanging and the same was homicidal in nature, homicidal death of the deceased Loma is established :-

(i) Lacerated wound 1/2"x1/4" over left cheek below the left eye, dried blood present flown downward on face. It is skin deep, margins are irregular.

(ii) Ecoymosis 5"x3" over right skin upper 2/3 rd anterior surface, reddish in colour, lacerated wound present 1/4"x1/4" skin deep in the ecoymosial wound, dried blood present.

(iii) Ecoymosis 6"x3" over lateral upper 2/3rd part of left leg, reddish in colour with L.W. in the centre of wound 1/4"x1/4" dried blood present.

(iv) Ecoymosis 2"x1" over left elbow present, reddish in colour.

(v) Ecoymosis 3"x2" over dorsum of right palm present, reddish in colour.

(vi) Ecoymosis 2"x1" over left lateral lower part of chest, reddish in colour.

5. Learned counsel for the appellant submits that the conviction of the appellant is based on the statements of P.W.-1, Dasmetbai, the wife of the deceased and P.W.-2, Deelu, the son of the deceased, however, the statements of these two witnesses do not inspire confidence as they have made contradictory versions in their examination-in-chief and cross-examination. He further submits that the cause of death of the deceased was asphyxia due to hanging. However, co-accused Bhola, against whom also identical allegation of hanging the deceased Loma with the help of other three accused persons was made, has already been acquitted in the earlier sessions trial. However, the appellant has been convicted and sentenced under Section 302 read with Section 34 of the Indian Penal Code and under Section 201 read with Section 34

of the Indian Penal Code and in the aforesaid circumstances, the Court below ought to have extended the benefit of doubt to the present appellant also.

6. On the other hand, learned counsel for the State, referring to the statements of P.W.-1, Dasmetbai and P.W.-2, Deelu, submits that they are natural witnesses to the incident. Their presence at the place of incident is not disputed and, therefore, their versions cannot be dismissed simply for inconsistent statements made by them in their examination-in-chief and cross-examination.

7. We have heard learned counsel for the parties. We have perused the charge-sheet, the evidence recorded during trial and the impugned judgment.

8. The conviction of the appellant is based on the statements of P.W.-1, Dasmetbai and P.W.-2, Deelu.

9. P.W.-1, Dasmetbai has deposed to the effect that some 9 to 10 years back, her husband died. Her husband was sitting in his house. Accused Khokha and Tuntun came there with Lathi and started assaulting her husband. They assaulted him on both his shoulders and head with club. This incident occurred in the courtyard of the house of her husband. She stopped them from beating her husband and asked them as to why they were beating, however, both the accused claimed that they shall kill him. She has further stated that when the accused persons were beating her husband and had fallen him on the ground, her daughter-in-law, Shanti came there, however, she was also chased by the above accused persons. They also broke the tiles (Kabelu) and utensils of the house. She has further stated that while her husband was lying on the ground after beaten by Tuntun and Khokha, at that moment, accused Kandaru,

Bhola and Tuntun came and all the four accused persons took her husband inside the home and tied him and hanged and ran away. When her husband died, thereafter all the four accused persons hanged him. In the meanwhile, her son also came there. The accused persons also chased him, as a result of which, he ran away. In the cross-examination, this witness has accepted the suggestion that the quarrel was between her husband and father of the accused Khokha regarding land and there was no land related dispute with Tuntun. Tuntun used to visit their house. There was no quarrel between her husband and Tuntun. She has further stated that on the date of incident also, Tuntun and Khokha came to her husband and talked about land. She has also accepted the suggestion put by the defence that when the talk was going on between her husband and Khokha, there was a Marpeet between Khokha and her husband. She has further stated that in the said Marpeet, Tuntun tried to mediate and asked them not to quarrel, however, even after mediation of Tuntun, Khokha and her husband were involved in the Marpeet. She has denied the suggestion put by the defence that the accused Tuntun did not beat her husband. In paragraph 6 of her statement, she has stated that in her diary statement, she had disclosed this fact that all the four accused persons had hanged after beating the deceased and she was not in a position to explain as to how this part does not find place in her statement of Ex.D-1. From perusal of the statement of this witness, we find that this witness has made contradictory statement in her examination-in-chief and cross-examination, wherein, in the examination-in-chief, she has stated that the appellant and the accused Khokha started assaulting the deceased by Lathi, however, in the cross-examination, she has made contradictory statement that there was no land related quarrel between her husband and the appellant, and the appellant and her husband had cordial relation and has further stated that there was no quarrel between her husband and the appellant and in fact when the deceased and Khokha were involved in Marpeet, the appellant had tried to

mediate and he had stopped them from quarreling. Though subsequently this witness has denied that there was no Marpeet between her husband and the appellant Tuntun. In examination-in-chief, she has also stated that the appellant came along with co-accused Kandaru and Bhola. Thus, after analysing the statement of this witness, we are of the considered opinion that it was not proper for the Court below to base the conviction of the appellant on the basis of the wavering statement of this witness. So far as the statement of P.W.-2, Deelu is concerned, he has stated that at the time of incident, he was present in his field and on hearing noise, he reached home and saw the appellant and Khokha assaulting the deceased by club and when he tried to mediate, he was also chased and his mother was present there and thereafter he fled from the place of incident and narrated the incident to Firdi and Sohan that Tuntun and Khokha are beating his father. Subsequently, he has stated that when he returned home, he found that his father Loma was hanged with rope in the house and his mother Dasmetbai told him that after killing Loma, all the four accused persons, Kandaru, Bhola, Khokha and Tuntun had hanged him and thereafter he lodged the report. In the cross-examination, he has admitted that as soon as he reached the place of incident, the accused persons threatened him and as a result of which, he fled from there and thereafter he did not see what happened there. From the statement of this witness, we find that this witness was not present at the place of incident for ~~every~~ brief period, but as soon as he reached there, he was chased by the accused persons and he had fled from the place of incident, therefore, the conviction is based solely on the statement of P.W.-1, Dasmetbai, who was present at the time of incident. We have also noticed that there was a third witness namely Shanti, the daughter-in-law of the deceased, who was present and had seen the incident, however, this witness has not been examined during the trial and there is no explanation for her non-examination. Apart from this, we further find that as per the eye-witness P.W.-1, Dasmetbai,

the assaults were made on both the shoulders and head, however, from perusal of the statement of P.W.-9, Dr. P.K.Shrivastava, who has conducted the post mortem, we find that no corresponding injury was noticed by him on the person of the deceased and, therefore, we are of the considered opinion that it would not be safe to rely upon the statement of P.W.-1, Dasmetbai.

10. Learned counsel for the appellant has relied upon the judgment in the case of **Ashish Batham vs. State of Madhya Pradesh, reported in AIR 2002 SC 3206**, wherein it has been held that the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by henious nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however, strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and grave the charge is greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between may be true and must be true and this basic and golden rule only helps to maintain the vital distinction between conjectures and sure conclusions to be arrived at one the touch stone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record.

11. On the basis of aforesaid discussion, we are of the considered opinion that the Court below was not justified in holding the appellant guilty and in the result the impugned judgment cannot be sustained. The same is set aside.

The appeal is allowed. The appellant is acquitted of all the charges. He be set at liberty forthwith, if not required in any other case.

Sd/-
Dhirendra Mishra
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

Gopal